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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/775,994	02/02/2001	Kevin Eugene Dombkowski	LUC-300/Dombkowski	7453
32205	7590	04/06/2006	7-4	
CARMEN B. PATTI & ASSOCIATES, LLC ONE NORTH LASALLE STREET 44TH FLOOR CHICAGO, IL 60602			EXAMINER SRIVASTAVA, VIVEK	
			ART UNIT 2623	PAPER NUMBER

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/775,994	DOMBKOWSKI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Vivek Srivastava	2647 2623	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 1.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 and 38 is/are rejected.
- 7) ☒ Claim(s) 37 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Response to Arguments*

Applicant's argue Gummalla fails to disclose sending one or more upstream signals as pulse code modulated data without packet headers using an upstream cable protocol.

The Examiner respectfully disagrees. Gummalla discloses "*In general, voice channel transmits the raw data without any headers.*" As result, the Applicant's arguments are not persuasive.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

***Claims 1 – 38*** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

***Claims 1, 13, 21 and 28*** are directed to signal claims. The claims are not directed to any useful application and are thus not statutory.

***Claims 2 – 12, 14 – 20, 22 – 27 and 29 – 38*** are rejected for being dependent on a base claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1, 9, 13, 21 and 28 rejected under 35 U.S.C. 102(e) as being anticipated by Gummalla (US 2002/0021711).**

**Claims 1, 9, 13, 21 and 28** have been incorporated from the previous office action by reference. Since the claims have not been amended and the Examiner's position has not changed, the rejection has not been reiterated below.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 2-4, 6, 7, 14-16, 22, 23 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gummalla in view of the DOCSIS Specifications.**

**Claims 2-4, 6, 7, 14-16, 22, 23 and 29-31** have been incorporated from the previous office action by reference. Since the claims have not been amended and the Examiner's position has not changed, the rejection has not been reiterated below.

**Claims 5, 17 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gummalla in view of Campbell (US 5,390,181).**

**Claims 5, 17 and 32** have been incorporated from the previous office action by reference. Since the claims have not been amended and the Examiner's position has not changed, the rejection has not been reiterated below.

**Claims 8 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gummalla in view of Gordon (US 6,614,843).**

**Claims 8 and 24** have been incorporated from the previous office action by reference. Since the claims have not been amended and the Examiner's position has not changed, the rejection has not been reiterated below.

**Claims 10, 11, 18, 19, 25, 26, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gummalla in view of the DOCSIS Specifications.**

**Claims 10, 11, 18, 19, 25, 26 and 33** have been incorporated from the previous office action by reference. Since the claims have not been amended and the Examiner's position has not changed, the rejection has not been reiterated below.

**Claims 12, 20, 27, 35 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gummalla.**

***Regarding claims 12, 20, 27 and 35,*** Gummalla discloses a voice signal but fails to disclose a video signal.

Official Notice is taken it would have been well known to communicate upstream video signals with voice signals to enable video telephone capabilities or video conference capabilities. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gummalla to include the claimed video signal for the benefit of enabling video telephone capabilities or video conference capabilities.

***As to claim 38,*** Gummalla fails to disclose the claimed wherein the step of sending one or more upstream signals comprises sending the one or more upstream signals as pulse code modulated data in a form that allows transfer to PSTN without transcoding the PCM data of one or more upstream signals.

Official Notice is taken it would have been well known to transfer PCM signals to PSTN without transcoding for the benefit of transferring signals over a widely accessible, well established and well connected network without the need for transcoding.

***Allowable Subject Matter***

**Claim 37** is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivek Srivastava whose telephone number is (571) 272-7304. The examiner can normally be reached on Monday – Friday from 9 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272 – 7331. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vs  
4/1/06



VIVEK SRIVASTAVA  
PRIMARY EXAMINER